

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

City of Parma	:	
6611 Ridge Road	:	
Parma, Ohio 44129	:	<u>Director's Final Findings</u>
	:	<u>and Orders</u>
Respondent	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the City of Parma ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of the Facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner and operator of a certain sanitary landfill facility, known as the Parma-Ridgewood Landfill, located at Ridgewood Drive, Parma, Cuyahoga County, Ohio 44129 (the "Facility").
2. The Facility was licensed by the Cuyahoga County Board of Health (the "CCBH") from

1965 through 1975, and by Ohio EPA from 1976 through 1988.

3. On September 18, 1988 Parma Mayor Michael Reis sent a letter to the CCBH declaring that the Facility was permanently closed. Thereafter, Respondent began conducting those activities required by Ohio Administrative Code (OAC) rule 3745-27-10(C)(1-9) (effective July 29, 1976) , such as providing adequate cover, seeding, grading, ensuring proper drainage, baiting for vectors, installing ventilation structures, and filing a plat of the site with the board of health.
4. Respondent installed ground water monitoring wells and began monitoring ground water in 1989. Respondent submitted semi-annual groundwater monitoring reports to Ohio EPA for more than 10 years.
5. Respondent completed the first round of statistical analysis of ground water monitoring data and submitted an assessment plan to begin assessment activities of identifying the source of ground water contamination and the rate, extent and concentration of the contamination. Assessment work was to be resumed in September 1997 however Respondent suspended implementation of the ground water quality assessment plan.
6. The ground water monitoring reports have indicated that trace concentrations of vinyl chloride were detected above the maximum contaminant levels (“MCL’s”) established by the Safe Drinking Water Act in monitoring well MW-4B. MW-4B monitors groundwater in a deep sandstone aquifer where data indicate that groundwater moves at less than 0.50 feet per year. MW-4B is located approximately 500 feet upgradient from the property line.
7. Ohio EPA issued seven notices of violation to Respondent between December 1998 and November 2002 for failure to implement the ground water assessment plan. Ohio EPA has not received any ground water detection monitoring reports for the second semi-annual sampling event of 2000, the first and second semi-annual sampling events for 2001 and for the first semi-annual sampling event of 2002. In addition, Ohio EPA has not received any ground water assessment monitoring reports for the first and second semi-annual sampling events of 2001, and for the first semi-annual sampling event of 2002.
8. Between 1998 and the present, Respondent has been in negotiation with Ohio EPA regarding the applicability of closure requirements. In view of the ten years of groundwater monitoring data, Respondent requested that the Director exercise discretion to reduce or eliminate groundwater monitoring and assessment requirements at the Facility.
9. The ground water monitoring rules effective at the time that Respondent operated the Facility, OAC Rule 3745-27-10 (effective July 29, 1976), required that ground water monitoring be continued for three years after the Facility closed. However, on March 1, 1990 a new version of OAC Rule 3745-27-10 became effective and required that

all new sanitary landfill facilities, all sanitary landfill facilities undergoing lateral and/or vertical expansions, and all sanitary landfills undergoing closure to implement a ground water monitoring program, which included a requirement to conduct thirty (30) years of ground water monitoring after closure.

10. Respondent contends that it was not legally obligated to conduct ground water monitoring because the 1976 version of the ground water monitoring rules, OAC Rule 3745-27-10 (effective July 29, 1976), which were applicable at the time that the Facility closed, provided that only three years of ground water monitoring was required. Respondent's position is based on its interpretation of a guidance document issued by the Division of Solid and Infectious Waste Management dated November 30, 1998, DSIWM-00-00-0117, "Ground Water Monitoring Requirements For Closed Facilities" (hereinafter the "Guidance").
11. According to Respondent's interpretation of the Guidance, all facilities where closure was completed prior to April 1, 1990, are required to comply with the ground water monitoring requirements of the 1976 rules, which require only three years of ground water monitoring after closure. Respondent contends that the Facility was closed on September 18, 1988, upon the written declaration of Mayor Michael Ries that the Ridgewood Municipal Landfill would cease accepting waste on that date.
12. Ohio EPA agrees that the Guidance determines whether the 1976 rules or the 1990 rules are applicable, but disagrees with Respondent's conclusion that the Facility completed its closure obligations prior to April 1, 1990, so as to limit Respondent's obligation to monitor ground water to three (3) years. While both Parties agree that Mayor Ries delivered a written notice to the Cuyahoga County Board of Health indicating that the Facility would cease accepting waste as of September 18, 1988, the Facility did not complete all the closure activities required by OAC Rule 3745-27-10 (effective July 28, 1976) prior to April 1, 1990. Subsection (C) of that rule states that "not later than 60 days after closure of a sanitary landfill, the operator shall complete the following actions:" (1) cover waste with two feet of cover material; (2) seed the site with grasses and other vegetation; (3) grade slopes; (4) provide for surface water drainage; (5) install ventilation structures; (6) bait the site for rodents and other vectors; (7) place appropriate signage at the facility; (8) file a plat of the site with the Board of Health and County Recorder; and (9) provide adequate site security. Ohio EPA contends that Respondent did not complete this list of closure obligations before April 1, 1990. For instance, some evidence suggests that Respondent was still adding cover and grading the Facility in July 1990 and did not file the appropriate plat for the Facility until December 6, 2001. It is unclear whether Respondent did, in fact, accomplish the remaining obligations specified in OAC Rule 3745-27-10(C) prior to April 1, 1990.
13. In order to resolve the disagreement between the Parties as to the proper interpretation of the Guidance and the legal effect of the application of that Guidance to the facts set forth above, the parties hereby agree to enter into these Findings &

Orders to resolve all remaining issues of noncompliance identified herein.

## **V. ORDERS**

Respondent shall comply with the following Orders:

1. Within 30 days after the effective date of these Orders, Respondent agrees to implement the attached Ground Water Monitoring System Work Plan (the "Work Plan"), dated June 27, 2003, attached hereto and incorporated herein as Attachment A. Respondent agrees to implement the Work Plan in accordance with the schedules contained therein.
2. Upon implementation of the work described in the Work Plan, Respondent shall further conduct all such work activities in a manner that is protective of human health, safety and the environment, conducted in a manner not inconsistent with all applicable federal and state laws and carry out all work in a manner which is protective of the workers' safety as is required by OSHA 1910. Where any portion of the work requires a permit or approval, Respondent shall submit applications in a timely manner and take all other action necessary to obtain such permits or approvals. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.
3. Respondent agrees to continue quarterly groundwater monitoring in any new monitoring well installed pursuant to the Work Plan and in MW-4B until Respondent can demonstrate eight (8) consecutive quarters of vinyl chloride concentrations below the MCL in a new well downgradient from MW-4B. In the event that Respondent is unable to demonstrate through monitoring of a new downgradient well that vinyl chloride concentrations are below MCL for eight (8) consecutive quarters, then Respondent shall install a second monitoring well at a location at least 25 feet, but no more than 75 feet, further downgradient from the first new well. Respondent shall thereafter begin monitoring the second new well until such time as Respondent is able to demonstrate that vinyl chloride concentrations are below MCL for eight (8) consecutive quarters. Respondent shall continue to install (no more than 75 feet from the previous well) and monitor additional wells further downgradient until such time as Respondent can demonstrate vinyl chloride concentrations are below MCL for eight (8) consecutive quarters. In the event that Respondent reaches the northern property boundary, it shall install a final monitoring well at that location, and shall continue to monitor that well until such time as it can demonstrate that concentrations of vinyl chloride are below MCL for eight (8) consecutive quarters. After eight (8) consecutive quarters of monitoring demonstrating concentrations of vinyl chloride in a new downgradient well below MCL, Respondent will report to Ohio EPA pursuant to the termination provisions at Section VI below. During the period that Ohio EPA is considering Respondent's report and unless and until Ohio EPA notifies Respondent of obligations under these Orders that Ohio EPA believes have not been completed, Respondent may suspend monitoring required by these Orders.

4. In the event that quarterly data reveals increases in vinyl chloride concentrations in each of eight (8) consecutive quarters, Respondent agrees to provide written notice to Ohio EPA within thirty (30) days and provide Ohio EPA with a First Determination in accordance with OAC Rule 3745-27-10(E)(4) as that rule was effective April 1, 1990. Unless otherwise authorized pursuant to OAC Rule 3745-27-10(E)(7), Respondent shall further comply with applicable provisions of OAC Rule 3745-27-10(F) or return to the detection monitoring required by these Orders.
5. Within thirty (30) days after the effective date of these Orders, Respondent shall record, in the deed or official records of the office of the Cuyahoga County Recorder, Cuyahoga County, Ohio, a use restriction agreement which prohibits Respondent, or any future owners of the real property upon which the Facility is located (the "Property"), from using any ground water underlying the Property for any potable use, including, without limitation, drinking, cooking, showering or bathing.

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the principal executive officer, the ranking elected official or other duly authorized employee of Respondent.

## **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's Facility.

## **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and

regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Solid and Infectious Waste Management  
2110 East Aurora Road  
Twinsburg, OH 44087-1969  
Attn: Unit Supervisor-DSIWM

and to:

Cuyahoga County Board of Health  
1375 Euclid Avenue  
Cleveland, Ohio 44115-1882  
Attn: Vince Caraffi

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein.

### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in

these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

### **XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### **XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

#### **IT IS SO ORDERED AND AGREED:**

#### **Ohio Environmental Protection Agency**

\_\_\_\_\_  
Christopher Jones  
Director

\_\_\_\_\_  
Date

#### **IT IS SO AGREED:**

#### **City of Parma**

By:\_\_\_\_\_

\_\_\_\_\_  
Date

Title: \_\_\_\_\_